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MUTUAL LEGAL ASSISTANCE COOPERATION TREATY WITH MEXICO

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY ON COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES FOR MUTUAL LEGAL ASSISTANCE, SIGNED AT MEXICO CITY ON DECEMBER 9, 1987

FEBRUARY 16, 1988.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *February 16, 1988.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty on Cooperation between the United States of America and the United Mexican States for Mutual Legal Assistance, signed at Mexico City on December 9, 1987.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter more effectively trans-border criminal activities. The Treaty should be an effective tool to combat a wide variety of modern criminals including members of drug cartels, "white-collar criminals," and terrorists. The Treaty is self-executing and utilizes existing statutory authority.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) the taking of testimony or statements of witnesses; (2) the provision of documents, records, and evidence; (3) the execution of requests for searches and seizures; (4) the serving of documents; and (5) the provision of assistance in procedures regarding the immobilizing, securing, and forfeiture of the proceeds, fruits, and instrumentalities of crime.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, DC, January 25, 1988.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty on Cooperation between the United States of America and the United Mexican States for Mutual Legal Assistance, signed at Mexico City on December 9, 1987. On December 29, 1987, the Mexican Congress approved the Treaty. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with Italy, the Netherlands, Switzerland and Turkey; others have been signed with the Bahamas, Canada, Colombia, Morocco, Thailand, and the United Kingdom concerning the Cayman Islands. The Treaty contains many provisions similar to those in the other treaties as well as some innovations.

The Treaty will not require implementing legislation, and will utilize the existing authority of the Federal courts, particularly 28 U.S.C. 1782.

Article 1 provides for assistance in the "prevention, investigation and prosecution of crimes" and in other criminal and ancillary proceedings arising from the criminal acts in question. The Treaty thereby provides for assistance at the investigative stage (such as grand jury proceedings), as well as after formal charges have been filed. Assistance under the Treaty will include: taking of testimony or statements of persons; provision of documents, records and evidence; executing requests for searches and seizures; obtaining of witness testimony; taking of measures to immobilize, secure, or forfeit assets; and other forms of assistance.

Article 1 also specifies the limited bases under the Treaty on which assistance may be denied by the requested Party. These bases include: when execution of the request would prejudice the requested Party's "security or other essential public policy or interest"; when the request relates to political or military offenses; or when the request does not comply with the Treaty's provisions. The article explicitly states that it is a mechanism for government to government mutual assistance in criminal matters and that it does not authorize one Party's authorities to undertake in the territory of the other Party the exercise and performance of functions exclusively entrusted to the authorities of the other party. Furthermore, the Treaty is not intended to create rights in private parties either to gather evidence or secure other assistance or to suppress or ex-

clude in civil or criminal proceedings evidence obtained under the Treaty.

Article 2 provides for a Coordinating Authority in each State which is responsible for complying with requests or transmitting them to the competent authorities to do so. For the United States, the United States Department of Justice will be the Coordinating Authority. For the United Mexican States, the *Procuraduria General de la Republica* (Attorney General) will be the Coordinating Authority.

Article 3 provides that, before the Coordinating Authority of the requested Party refuses a request it should try to determine if there is a way to render the assistance. If the requesting Party accepts the assistance subject to limitations, it shall comply with such limitations.

Article 4 first states what information must be included in each request for assistance and then states what information should be provided "to the extent necessary and possible." The article provides for oral requests in urgent cases and the confidentiality of requests, in certain circumstances.

Article 5 provides that the requested Party shall pay all costs relating to the execution of the request—except for the lawful fees of witnesses and expert witnesses.

Article 6 provides that the requesting Party shall not use any information or evidence obtained under the Treaty for purposes other than those stated in the request without the prior consent of the requested Party and establishes mechanisms for the requested Party to request that information or evidence furnished be kept confidential.

Article 7 provides that the requesting Party may compel the taking of testimony or production of documents, records, and objects "to the same extent as in criminal investigations or proceedings in that State." It establishes mechanisms to take such testimony in Mexico in accordance with Mexican law and in such a way that the witness will be subject to cross-examination in a manner that satisfies U.S. constitutional and other legal requirements.

Article 8 provides a formalized framework for transferring persons in custody for testimonial or identification purposes.

Article 9 obligates the requested Party to invite witnesses needed in the requesting State to appear in person in the requesting State.

Article 10 states that the requested Party shall provide the requesting Party with copies of publicly available records of government departments and agencies in the requested State and may provide the requesting Party with any other record or information in the possession of a government office or agency to the same extent and under the same conditions as it would be available to the requested Party's own law enforcement or judicial authorities.

Article 11 provides that the Coordinating Authority of either Party may notify the Coordinating Authority of the other Party when the proceeds, fruits, or instrumentalities of a criminal offense are believed to be in the territory of the other Party, in order that the Parties shall, to the extent permitted by their respective laws, assist each other in procedures regarding forfeiture or restitution of proceeds (e.g. money, property) or instruments of an offense or procedures regarding the collection of fines imposed as a sentence

for an offense. The provision is consistent with the recently enacted U.S. legislative provision which applies, to the extent provided by treaty, to permit equitable sharing of forfeited property with a foreign government in order to reflect that government's contribution in narcotics investigations leading to seizure or forfeiture.

Article 12 establishes a formal procedure for handling requests for the search, seizure, and returning of objects located in the requested State for use as evidence in the requesting State.

Article 13 obliges the requested Party to take all necessary measures to locate or identify persons, such as witnesses and experts, who are of importance to the requesting Party in connection with an investigation, prosecution, or proceeding covered by the Treaty.

Article 14 creates an obligation on the part of the requested Party to serve any legal document (e.g. summons, complaint, subpoena) transmitted by the Coordinating Authority of the requesting Party.

Article 15 states that the assistance and procedures provided by this Treaty shall not prevent or restrict assistance available under any other international convention or agreement to which the United States and Mexico are parties or under the provisions of their national laws (e.g. the use of letters rogatory).

Article 16 provides that the Treaty shall enter into force on the date of the exchange of the instruments of ratification. Article 17 establishes termination procedures. Article 18 provides that the parties shall consult periodically on the implementation of the Treaty.

The United States Delegation, consisting of representatives for the Departments of State and Justice, has prepared a Technical Section-by-Section Analysis of the Treaty. That analysis will be transmitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in favoring approval of this treaty by the Senate as soon as possible.

Respectfully submitted,

GEORGE P. SHULTZ.

Treaty on Cooperation Between the United States of America and the United Mexican States for Mutual Legal Assistance

The Governments of the United States of America and the United Mexican States (the Parties),

Desiring to cooperate in the framework of their friendly relations, and to undertake mutual legal assistance to provide for the best administration of justice in criminal matters,

Have agreed as follows:

Article 1

SCOPE OF THE TREATY

1. The Parties shall cooperate with each other by taking all appropriate measures that they have legal authority to take, in order to provide mutual legal assistance in criminal matters, in accordance with the terms of this Treaty and subject to the limitations of their respective domestic legal provisions. Such assistance shall deal with the prevention, investigation and prosecution of crimes or any other criminal proceedings arising from acts which are within the competence or jurisdiction of the requesting Party at the time the assistance is requested, and in connection with ancillary proceedings of any other kind related to the criminal acts in question.

2. This Treaty does not empower one Party's authorities to undertake, in the territorial jurisdiction of the other, the exercise and performance of the functions or authority exclusively entrusted to the authorities of that other Party by its national laws or regulations.

3. Subject to the provisions of paragraph 1 of this Article, requests for assistance under this Treaty will be executed, except that the requested Party may deny a request to the extent that:

(a) execution of the request would require the requested Party to exceed its legal authority or would otherwise be prohibited by the legal provisions in force in the requested State, in which case the Coordinating Authorities referred to in Article 2 of this Treaty shall consult with each other to identify alternative lawful means for securing assistance;

(b) execution of the request would in the judgment of the requested Party prejudice its security or other essential public policy or interest;

(c) the Executive of the requested Party regards the request as concerning an offense which is political or of a political character;

(d) the request relates to military offenses, except those which constitute offenses under ordinary criminal law; or

(e) the request does not comply with the provisions of this Treaty.

4. In conformity with this Article and in accordance with the other provisions of this Treaty, such assistance will include:

(a) the taking of testimony or statements of persons;

(b) the provision of documents, records and evidence;

(c) the legal execution of requests for searches and seizures as ordered by the judicial authorities of the requested Party in accordance with its constitutional and other legal provisions;

(d) the legal execution of requests for the taking of measures to immobilize, secure, or forfeit assets as ordered by the judicial authorities of the requested Party in accordance with its constitutional and other legal provisions;

(e) the voluntary transferring of persons in custody for testimonial or identification purposes;

(f) serving documents;

(g) locating or identifying persons;

(h) exchanging information; and

(i) other forms of assistance mutually agreed by the Parties, in conformity with the object and purpose of this Treaty.

5. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

ARTICLE 2

COORDINATING AUTHORITIES

1. With the purpose of ensuring due cooperation between the Parties in providing to each other mutual legal assistance which falls within the scope of this Treaty, the United Mexican States designates as its Coordinating Authority its *Procuraduria General de la Republica,* and the United States of America designates as its Coordinating Authority the Central Authority of the United States Department of Justice. The Coordinating Authority of the requested State shall promptly comply with the requests or, when appropriate, shall transmit them to other competent authorities to do so. The competent authorities of the requested State shall take all necessary measures to promptly execute the requests in accordance with Article 1.

2. The Coordinating Authorities shall consult regularly with each other in order to secure the most effective implementation of this Treaty and to anticipate and resolve problems that may arise in its application.

3. For those purposes, the Coordinating Authorities shall meet at the request of either one of them and at a time and place to be mutually agreed.

ARTICLE 3

LIMITATIONS ON ASSISTANCE

1. Before refusing the execution of any request pursuant to this Treaty, the Coordinating Authority of the requested Party shall determine whether there are conditions whose satisfaction would make possible the rendering of assistance. If the requesting Party

accepts the assistance subject to those conditions, it shall comply with them.

2. The Coordinating Authority of the requested Party shall promptly inform that of the requesting Party of the reason for denying the excution of a request.

ARTICLE 4

CONTENTS OF THE REQUEST FOR MUTUAL ASSISTANCE

1. Requests for assistance will be submitted in writing and translated into the language of the requested State. In urgent cases, the request may be submitted orally and the requested Party will take the necessary measures it is competent to undertake, with the understanding that as soon as possible the request will be formalized in writing.

2. The request will include the following data:

(a) the name of the competent authority conducting the investigation, prosecution or proceeding to which the request relates;

(b) the subject matter and nature of the investigation, prosecution or preceeding;

(c) a description of the evidence or information sought or the requested acts of assistance;

(d) the purpose for which the evidence, information, or other assistance is sought; and

(e) the method of execution to be followed.

3. To the extent necessary and possible, a request shall also include:

(a) available information on the identity or physical description and whereabouts of a person to be located;

(b) the identity or physical description and location of a person to be served, that person's relationship to the investigation, prosecution or proceeding, and the manner in which service is to be made;

(c) the identity or physical description and location of persons from whom evidence is sought;

(d) a precise description of the search to be conducted and of the objects to be seized; and

(e) any other information necessary under the laws of the requested Party to permit the execution of the request.

4. In cases of requested service of documents that are to be processed by the Coordinating Authority, those documents will be attached to the request and duly translated, certified, and authenticated.

5. The requested State shall keep confidential a request and its contents unless otherwise authorized by the Coordinating Authority of the requesting Party. If the request cannot be executed without breaching the required confidentiality, the Coordinating Authority of the requested Party shall so inform the Coordinating Authority of the requesting Party, which shall then determine whether the request should nevertheless be executed.

ARTICLE 5

COSTS

The requested Party shall pay all costs relating to the execution of the request, except for the lawful fees of witnesses and expert witnesses and the expenses related to travel of witnesses pursuant to Articles 8 and 9 of this Treaty, which fees and expenses shall be borne by the requesting Party.

ARTICLE 6

LIMITATIONS ON USE OF INFORMATION OR EVIDENCE

1. The requesting Party shall not use any information or evidence obtained under this Treaty for purposes other than those stated in the request without the prior consent of the Coordinating Authority of the requested Party.

2. When necessary, the requested Party may request that information or evidence furnished be kept confidential in accordance with conditions which its Coordinating Authority shall specify. If the requesting Party cannot comply with such a request, the Coordinating Authorities shall consult to determine mutually agreeable conditions of confidentiality in accordance with Article 1 of this Treaty.

3. The use of any information or evidence obtained under this Treaty which has been made public in the requesting State in a proceeding resulting from the investigation or proceeding described in the request shall not be subject to the restriction referred to in paragraph 1 of this Article.

ARTICLE 7

TESTIMONY IN THE REQUESTED STATE

1. A person in the requested State whose testimony is requested shall be compelled by subpoena, if necessary, by the competent authority of the requested Party to appear and testify or produce documents, records, and objects in the requested State to the same extent as in criminal investigations or proceedings in that State.

2. Any claim of immunity, incapacity, or privilege under the laws of the requesting State shall be resolved exclusively by the competent authorities of the requesting Party. Accordingly, the testimony shall be taken in the requested State and forwarded to the requesting Party where such claims will be resolved by its competent authorities.

3. The Coordinating Authority of the requested Party shall inform that of the requesting Party of the date and place for the taking of the testimony of the witness. When possible the Coordinating Authorities shall consult in order to secure a mutually agreeable date.

4. The requested Party shall authorize the presence in the taking of the testimony of such persons as specified by the Coordinating Authority of the requesting Party in its request.

5. Documents, records, and copies thereof shall be certified or authenticated in accordance with the procedures specified in the re-

quest. If certified or authenticated in such manner, they shall be admissible in evidence as proof of the truth of the matters set forth therein.

ARTICLE 8

TRANSFERRING PERSONS IN CUSTODY FOR TESTIMONIAL OR IDENTIFICATION PURPOSES

1. A person in custody in the requested State who is needed as a witness or for purposes of identification in the requesting State shall be transported to that State if such person consents and if the Coordinating Authority of the requested Party has no reasonable basis to deny the request.

2. For purposes of this Article:

(a) the requesting Party shall have the authority and obligation to keep the person transferred in custody unless otherwise authorized by the requested Party;

(b) the requesting Party shall return the person transferred to the custody of the requested Party as soon as circumstances permit or as otherwise agreed between the Coordinating Authorities;

(c) the requesting Party shall not require the requested Party to initiate extradition proceedings to secure the return of the person in custody; and

(d) the person transferred shall receive credit for service of the sentence imposed in the requested Party for time served in the custody of the requesting Party.

ARTICLE 9

APPEARANCE IN THE REQUESTING STATE

When the appearance of a person who is in the requested State is needed in the requesting State, the Coordinating Authority of the requested Party shall invite the person to appear before the appropriate authority of the other Party, and shall indicate the extent to which the expenses will be paid. The Coordinating Authority of the requested Party shall communicate the response of the person promptly to that of the requesting Party.

ARTICLE 10

PROVIDING RECORDS OF GOVERNMENT AGENCIES

1. The requested Party shall provide the requesting Party with copies of publicly available records of government departments and agencies in the requested State.

2. If its legal provisions do not prohibit it, the requested Party may provide any record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities.

3. Documents, records and copies thereof shall be certified or authenticated in accordance with the procedures specified in the request. If certified or authenticated in such manner, they shall be

admissible in evidence as proof of the truth of the matters set forth therein.

ARTICLE 11

IMMOBILIZING, SECURING AND FORFEITURE OF ASSETS

1. The Coordinating Authority of either Party may notify that of the other when it has reason to believe that proceeds, fruits or instrumentalities of crime are located in the territory of the other Party.

2. The Parties shall assist each other, to the extent permitted by their respective laws, in procedures relating to the immobilizing, securing and forfeiture of the proceeds, fruits and instrumentalities of crime, restitution and collection of fines.

ARTICLE 12

SEARCH AND SEIZURE

1. A request for search, seizure and delivery of any object acquired thereby to the requesting State shall be executed if it includes the information justifying such action under the laws of the requested Party.

2. The authority that has executed a request for search and seizure shall provide to the Coordinating Authority such certification as may be specified in the request concerning the identity of the object seized, the integrity of its condition, and the continuity of custody thereof. Such certification shall be admissible in evidence in the requesting Party as proof of the truth of the matters set forth therein.

ARTICLE 13

LOCATION OR IDENTIFICATION OF PERSONS

1. The requested Party shall take all necessary measures to locate or identify persons who are believed to be in that State and who are needed in connection with an investigation, prosecution, or proceeding within the scope of this Treaty.

2. The Coordinating Authority of the requested Party shall promptly communicate the results of its inquiries to the Coordinating Authority of the requesting Party.

ARTICLE 14

SERVING DOCUMENTS

1. The requested State shall cause to be served any legal document transmitted by the Coordinating Authority of the requesting Party for the purpose of service.

2. Any request for the service of a document requiring the appearance of a person before an authority in the requesting State shall be transmitted within a reasonable time before the scheduled appearance.

3. The requested State shall return proof of service as specified in the request.

ARTICLE 15

COMPATIBILITY OF THIS TREATY WITH OTHER INTERNATIONAL AGREEMENTS AND DOMESTIC LAWS

Assistance and procedures provided by this Treaty shall not prevent a Party from granting assistance through the provisions of other international agreements to which it may be a party or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral or multilateral arrangement, agreement, or practice which may be applicable.

ARTICLE 16

RATIFICATION AND ENTRY INTO FORCE

1. This Treaty shall be ratified by the Parties in accordance with their respective constitutional procedures and the instruments of ratification shall be exchanged at Washington, as soon as possible.

2. This Treaty shall enter into force on the date of the exchange of the instruments of ratification.

ARTICLE 17

TERMINATION

Either Party may terminate this Treaty by giving written notice through diplomatic channels to the other Party at any time. Unless otherwise agreed by the Parties, termination shall become effective six months after the date such notice is given. The requests for assistance that may be pending at the termination of the Treaty may be executed if agreed by both Parties.

ARTICLE 18

REVIEW

The Parties shall meet at least every two years from the date of entry into force of this Treaty, at a time and place to be mutually agreed upon, in order to review the effectiveness of its implementation and to agree on whatever individual and joint measures are necessary to improve its effectiveness.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Mexico City, on the ninth day of the month of December of the year of nineteen hundred and eighty seven, in two originals, in the English and Spanish languages, both texts being equally authentic.

For the Government of the United States of America:

CHARLES J. PILLIOD, Jr.,
Ambassador.

For the Government of the United Mexican States:

SERGIO GARCIA RAMIREZ,
Attorney General of the Republic.

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